

Industry Circular



Internal Revenue Service

Alcohol, Tobacco, and Firearms Division
Washington, D.C. 20224

Industry Circular 71-12

May 17, 1971

CHANGES IN BEER REGULATIONS UNDER PUBLIC LAW 91-673

Brewers and others concerned:

Purpose. The purpose of this circular is to inform you of the amendments made in 26 CFR Part 245, Beer, by Treasury Decision 7113 which was published in the Federal Register for May 13, 1971.

Background. The amendments implement the provisions of Public Law 91-673, effective May 1, 1971, by (a) permitting credit or refund of tax if beer is returned to another brewery of the same brewer and permitting offsets or deductions from taxable removals if beer is returned to the same brewery from which it was removed, (b) permitting credit or refund of tax in the case of beer lost by theft or rendered unmerchantable, (c) permitting removals without payment of tax for use in research, development, or testing, (d) permitting the quadrennial bonding requirements to be met by certifying the continuation of an existing bond in place of the present requirement that a new bond be given, (e) permitting case packing, loading, or storing facilities away from the main part of the brewery but in reasonable proximity thereto, (f) eliminating the requirement for setting aside a designated part of the brewery as the brewery bottling house, and (g) authorizing the establishment of pilot brewing plants.

NATURE OF CHANGES

Returned beer. The revised regulations make two changes affecting the return of beer to the brewery. First, the definition of "removal for consumption or sale" has been changed to mean any removal (other than a removal without payment of tax) of beer from the brewery. Accordingly, beer returned to the brewery on the same day on which it was removed will no longer be considered as beer which has not been removed for consumption or sale. Instead, the revised regulations will provide that any beer returned to the same brewery from which it is removed for consumption or sale (regardless of when it was removed) shall be used as an offset or deduction in determining the amount of tax due on the total quantity of beer removed for consumption or sale for the day during which such beer was returned. The second change permits the tax paid on beer to be refunded or credited, upon filing a proper claim, to the brewer when beer is returned to any of his breweries other than the brewery from which the beer was originally removed for consumption or sale.

Beer lost by theft or rendered unmerchantable. The revised regulations extend the loss provisions to include beer lost by theft before removal from the brewery and beer rendered unmerchantable by fire, casualty, or act of God. In the case of losses by theft, claims for refund, credit, or relief from liability may not be approved unless the brewer proves to the satisfaction of the Assistant Regional Commissioner that the theft occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them; and in the case of beer rendered unmerchantable, such claims may not be allowed unless the brewer proves to the satisfaction of the Assistant Regional Commissioner that such beer cannot be salvaged and returned to the market for consumption and sale as beer. Of course, no such claim may be allowed if the brewer is indemnified by insurance or otherwise in respect of the tax.

Filing of claims. Claims for refund, credit, or relief from liability must be filed within six months after the date of the return to the brewery, loss, destruction, or rendering unmerchantable.

Removals for research, development, or testing. A new provision has been added to the regulations which will permit brewers to remove beer without payment of tax for use in research, development, or testing. Under the revised regulations, before any beer may be so removed the brewer would be required to furnish either a consent of surety extending the terms of his existing bond to include such removals or a new bond which is conditioned to cover such removals. Also, before each such removal, the brewer would be required to submit application to, and receive the approval of, his Assistant Regional Commissioner.

Continuation of bond coverage. Existing regulations require that a brewer file a new bond once every 4 years. The revised rules provide that if the contract of surety on an expiring bond is continued in force for a period of not less than 4 years, the brewer may file a certificate attesting to continuation of the bond in lieu of a new bond. Thus, brewers whose bonds expire after April 30, 1971, may file a continuation certificate on Form 1566-A in lieu of filing a new bond, Form 1566. Upon expiration of the continuation certificate, the brewer could file succeeding continuation certificates if the contract of surety is continued in force for successive periods of not less than 4 years. Such a continuation certificate constitutes a bond and is subject to all provisions of law and regulations relating to bonds on Form 1566.

Use of brewery. The revised regulations make two major changes affecting the use of the brewery. First, the regulations no longer require that bottling be conducted in a portion of the brewery set aside and designated as the brewery bottling house. Second, facilities under the control of the brewer for case packing and storing, as well as facilities for loading, which are located within reasonable proximity to the brewery packaging facilities may be approved by the Assistant Regional Commissioner as part of the brewery if the revenue will not be jeopardized thereby.

Definitions of the terms "package" and "packaging". A new definition has been added to the regulations to define the term "package" to mean a bottle, can, keg, barrel, or other original consumer container, and "packaging" to mean the filling of any package. Although the terms "bottle" and "bottling" have been deleted from the law, the definitions for these terms have been retained in the revised regulations for the purpose of clarity.

Pilot brewing plants. The revised regulations amend Subpart CC of 26 CFR Part 245 by deleting therefrom the provisions for the establishment of experimental breweries and prescribing therein provisions for the qualification and operation of brewery premises of pilot brewing plants, including the filing of applications and bonds, the transfer of beer between a pilot brewing plant and a brewery operated by the same person, and the records required to be kept by the proprietor of a pilot brewing plant. In view of the similarity between the revised regulations and the current regulations relating to experimental breweries, persons who were authorized prior to May 1, 1971, to operate an experimental brewery will be permitted to continue to operate their experimental brewery during the period covered by their current authorization; however, in order to continue operations after expiration of such authorization, they will be required to qualify their premises as a pilot brewing plant.

Incorporation of ruling. In addition to the changes required to conform regulations to the amended law, the revised regulations will incorporate the provisions of Revenue Ruling 57-558 which require that a statement of process for fermented beverage products marketed under a name other than "beer," "ale," "porter," or "stout" be submitted as a part of the Brewer's Notice, Form 27-C.

Submission of amended Form 27-C. It will not be necessary for a brewer to submit an amended notice on Form 27-C to reflect the deletion of the brewery bottling house

until he is next required under § 245.45 to furnish a new bond or a continuation certificate, unless he is required by the Assistant Regional Commissioner under § 245.44 to file a new and complete notice. Similarly, a brewer who has filed a statement of process under the provisions of Revenue Ruling 57-558, would not be required to file a new notice, Form 27-C, to reflect such process.

FORMS

Form 27-C, Brewer's Notice. This form is being revised (1) by adding a provision for continuation of the business under a continuation certificate, (2) by deleting all references to the brewery bottling house, and (3) by adding a requirement of submission of statements of process for fermented beverages to be marketed under a name or description other than "beer," "ale," "porter," or "stout."

Form 103, Brewer's Monthly Report of Operations. This form is being revised by deleting all references to the racking room and bottling house and providing for the recording of (1) beer received from pilot brewing plants, (2) beer returned to the brewery after removal therefrom, (3) beer returned to the brewery after removal from another brewery, (4) beer removed for use in research, development, or testing, (5) beer transferred to pilot brewing plants, and (6) beer lost by theft.

Form 1566, Brewer's Bond. This form is being revised (1) to permit it to be used either by a brewer or a proprietor of a pilot brewing plant, (2) to provide for the continuation of the contract of surety, and (3) to extend its coverage to include beer removed for use in research, development, or testing.

Form 2034, Beer Tax Return. This form is being revised to include space for recording the quantity of beer returned to the same brewery from which removed and to provide for deducting such returned beer from the total quantity of beer removed for consumption or sale in determining the amount of tax to be paid for the semi-monthly period covered by the return.

Form 2051 Sheet 2, Record of Brewery Operations. This form is being revised to provide space and instructions for recording the additional information which will be required on Form 103. Existing Forms 2051, Sheet 2, on hand at breweries may, if the brewer so desires, be appropriately modified in line with the revised form, in order that existing forms may be used up.

Supply of new and revised forms. Your Assistant Regional Commissioner will supply you with the new and revised forms as soon as they are available.

INQUIRIES

Inquiries regarding this circular should refer to its number and be addressed to your Assistant Regional Commissioner, Alcohol, Tobacco and Firearms.



Rex D. Davis, Director
Alcohol, Tobacco and Firearms Division